In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1417

BOOSTER LODGE NO. 405, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, and THE BOEING COMPANY

No. 71-1563

THE BOEING COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

and

BOOSTER LODGE NO. 405, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

These two petitions seek review of the same judgment of the court of appeals of which the Board has sought review by its petition in *National Labor Relations Board* v. *The Boeing Company*, No. 71-1607. The court of appeals upheld the Board's rulings (1) that the Union violated Section 8(b)(1)(A) of the National Labor Relations Act by fining employees who, following their resignations from the Union during a strike, returned to work and (2) that the Union did not violate that section by fining members who returned to work during the strike either without or before resigning. The court held, however, that, contrary to the Board's ruling, the agency was required itself to determine, before it could uphold the Union fines, whether they were reasonable. The latter ruling is the subject of the Board's petition in No. 71-1607.

1. *The Union's Petition.* The Union's petition (No. 71-1417) challenges the rulings that the fines imposed for returning to work after resignation were unlawful and that the Board is required to determine the reasonableness of the fines. The former issue is the same as that on which the Court granted the Board's petition for certiorari in *National Labor Relations Board* v. *Granite State Joint Board* on March 20, 1972 (No. 71-711), and the decision of the court of appeals on this point conflicts with that of the First Circuit in *Granite State* (446 F. 2d 369). The latter issue is the one on which the Board itself has petitioned. Accordingly, the Board does not oppose the petition in No. 71-1417.

2. *The Company's Petition.* The Company urges this Court to reexamine and overrule *National Labor Relations Board* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, which held that a union's fining of ~~employees~~ members who crossed a union picket line during a strike does not violate Section 8(b)(1)(A). This Court, however, reaffirmed the rationale of *Allis-Chalmers* as recently as 1969 (*Scofield* v. *National Labor Relations Board*, 394 U.S. 423), and the Company points to nothing that warrants re-examination of *Allis-Chalmers*. Accordingly, the Company's petition (No. 71-1563) should be denied.

Respectfully submitted.

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JUNE 1972.

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